

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 6TH FEBRUARY 2006 / 17TH MAGHA, 1927

WP(C).No. 33248 of 2006(G)

AGAINST THE ORDER IN CC 22/1998 IN
CMP.4965/2006 of J.M.F.C.-II, KANJIRAPPALLY

PETITIONER:

B.SOMASEKHAR,
AGED 52, S/O.BHASKARAN NAIR,
CHIRAYIL MADATHIL, ANAPRAMBAL,
THALAVADI, ALAPPUZHA.

BY ADV. SRI.K.A.HASSAN

RESPONDENTS:

- 1. A.P.JAYASREE,
PRASANNA SADANAM,
PONKUNNAM.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX IN WPC NO.33248/2006

PETITIONER'S EXHIBITS:

EXT.P1:- CERTIFIED COPY OF THE IMPUGNED ORDER DATED 4/12/2006.

EXT.P2:- TRUE PHOTOCOPY OF THE PETITION UNDER SECTION 311(A) FILED BY THE
COMPLAINANT/RESPONDENT.

EXT.P3:- COPY OF THE OBJECTION FILED BY THE PETITIONER/ACCUSED.

[TRUE COPY]

R.BASANT, J

W.P.C.No.33248 of 2006

Dated this the 6th day of February 2007

JUDGMENT

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. He was convicted by the trial court. Conviction was reversed in appeal. In the appeal against the judgment of acquittal by the appellate court, this court directed that the matter be disposed of afresh by the learned Magistrate. The case was remitted back to the learned Magistrate. Before the learned Magistrate, an application was filed by the complainant that the accused may be directed to furnish the signature for the purpose of comparison. The prayer was made under Section 311 A of the Amended Code of Criminal Procedure. The learned Magistrate, by the impugned order, granted the said request and the petitioner has come before this court complaining that invocation of the powers under Section 311 A is not justified.

2. I am of the opinion that the learned Magistrate is absolutely justified in invoking the powers under Section 73 of the Evidence Act to issue the directions to the accused to furnish

his signature and handwriting for the purpose of comparison. Since the same is absolutely justified under Section 73 of the Evidence Act, according to me, it is unnecessary to embark on any detailed discussion as to whether such a course is justified under Section 311 A of the Amended Code of Criminal Procedure. The history of the amended provision reveals that the decision of the Supreme Court in State of Uttar Pradesh v. Ram Babu Misra [AIR 1980 Supreme Court 791] had persuaded the legislature to bring about such an amendment. The contention of the learned counsel for the petitioner that the powers under Section 311A cannot be invoked unless a person has at sometime been arrested in connection with such investigation or proceedings appear to be absolutely justified. Invocation of the powers under Section 311A, at the stage of trial, does not appear to be necessary or warranted as the same result can be achieved by invocation of the powers under Section 73 of the Evidence Act by the court below.

3. In as much as the impugned directions are perfectly justifiable by invocation of the powers under Section 73 of the Evidence Act, I am satisfied that the impugned order does not warrant any interference.

3. There is a further contention that one of the documents, sought to be sent as standard/admitted writing, is not really admitted by the petitioner. The learned Magistrate shall consider whether there is any admission of such writing and shall forward the document to the expert only after satisfying himself that the same is admitted/standard writing.

4. This Criminal Miscellaneous Case is, in these circumstances, dismissed with the above observations.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006